Summary of NOAA and EPA Response to Comments Regarding the Agencies' Proposed Finding that Oregon has Failed to Submit a Fully Approvable Coastal Nonpoint Program

A. General Comments

Proposed Decision

Comment A.1: The majority of commenters supported NOAA and EPA's proposed finding that Oregon has failed to submit a fully approval coastal nonpoint program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). In addition to specific concerns addressed in other sections below, commenters noted that 16 years after receiving conditional approval for its coastal nonpoint program, Oregon still does not have an adequate program in place to control polluted runoff to coastal waters and protect designated used, nor has the state adopted additional management measures for forestry where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Commenters also noted that the state failed to follow through on its 2010 commitments to NOAA and EPA—commitments NOAA and EPA used to inform their settlement agreement deadlines with the Northwest Environmental Advocates—to address three remaining conditions on its program related to new development, septic systems, and forestry by March 2013.

While some commenters agreed that Oregon did need to do more to improve water quality, they did not agree with NOAA and EPA's proposed decision because they opposed withholding federal funding under CZMA Section 306 and CWA Section 319, two programs that help to improve water quality and restore habitat. A few commenters noted NOAA and EPA should continue to work with Oregon to improve its water quality programs and that the state just needed additional time to meet the CZARA requirements.

Other commenters opposed NOAA and EPA's proposed finding. Generally, they stated Oregon did have adequate programs in place to meet, or in some cases exceed, the CZARA requirements and control polluted runoff. More specific comments are discussed in sections below.

Source: 1-C, 2-B, 4-A, 5-A, 8-B, 9-A, 13-A, 14-A, 14-C, 15-A, 16-B, 17-A, 19-B, 22-A, 22-C, 23-A, 24-A, 25-A, 25-B, 26-B, 28-A, 30-A, 30-B, 30-H, 31-A, 33-A, 33-B, 34-A, 35-A, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 40-A, 41-A, 42-A, 42-B, 43-A, 44-A, 44-B, 46-A, 47-A, 48-B, 49-A, 53-A, 52-A, 54-A, 55-B, 56-C, 57-A, 64-B, 64-D, 66-B, 66-D, 68-B, 68-D

Response A.1:

State Legislature Has Been Obstructing ODEQ's Ability to Make Changes

Comment A.2: One commenter stated that the Oregon Department of Environmental Quality has been working hard to get the improvements needed to improve water quality and meet all coastal nonpoint program requirements. However the State Legislature has been obstruction ODEQ's progress and is the one that needs to take action.

Source: 25-C

Response A.2:

Federal and State Governments Have Responsibility to Manage Waters

Comment A.3: One commenter stated that the Federal and state governments have a responsibility to manage waters in the public trust for maximum long-term benefit for current and future generations. They noted this was not being done.

Source: 22-C

Response A.3:

B. Funding

Impacts of Withholding Funds

Comment B.1: Commenters recognized that withholding funds under Section 306 of the Coastal Zone Management Act (CZMA) and Section 319 of the Clean Water Act (CWA) could negatively impact the state's ability to improve quality and support beneficial programs such as Total Maximum Daily Loads (TMDLs), Oregon Watershed Enhancement Board (OWEB) watershed planning and restoration projects, local land use planning, and the provision of technical assistance to coastal communities to help them address pressing coastal management issues such as coastal hazards, stormwater management, and growth management. A few commenters were against NOAA and EPA withholding funds from these programs because they felt withholding funding from two important programs for addressing polluted runoff and coastal habitat issues in the state would be counterproductive and would likely not result in the policy and programmatic changes NOAA and EPA seek. Others noted that withholding funding would hurt two state programs and agencies, Oregon's Coastal Management Program in the Department of Land and Conservation and Development and Oregon's Nonpoint Source Management Program in the Department of Environmental Quality, that have very little (if any) influence over the most significant remaining issues (i.e., forestry and agriculture). Some commenters also noted that withholding funds would negatively impact coastal communities and watershed groups that also rely on this funding from NOAA and EPA.

Other commenters supported withholding funds even though they acknowledged it may have some negative impacts initially. They saw withholding funding as the only way to get action in the state to improve water quality and protect designated used. One commenter also noted that NOAA and EPA's failure to withhold funding sooner allowed Oregon to limp along for over 16 years with inadequate management measures for its coastal nonpoint program while drinking water and other water quality impairments occurred.

Source: 1-C, 5-A, 8-B, 14-C, 16-B, 17-A, 25-A, 25-B, 25-D, 25-E, 25-F, 33-A, 33-B, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 43-A, 48-B, 55-B, 64-B, 66-B, 68-B,

Response B.1:

Oregon Stands to Lose $4 million in federal funding.

Comment B.2: Several commenters stated that if NOAA and EPA's proposed finding that Oregon has failed to submit a fully approvable coastal nonpoint program stands, Oregon would lose $4 million in federal funding.

Source: 1-C, 14-C, 43-A

Response B.2:

C. Authorities Under CZARA

NOAA and EPA's Authority to Require Additional Management Measures

Comment C.1: A few commenters stated NOAA and EPA does not have the authority to require Oregon to develop additional management measures that go beyond the original management measures in the CZARA guidance. [***more details***]

Other commenters noted that CZARA requires Oregon to demonstrate that it has additional management measures in place to meet water quality standards and protect designated uses. The commenters noted that Oregon has not met this requirement since water quality standards are still not being met and designated uses are not being protected. They were supportive of placing additional management measure requirements on Oregon's coastal nonpoint program and suggested specific measures or nonpoint source issues the additional measures needed to address (see specific comments below).

*Source: ***, 15-E, 28-E, 30-B, 30-O, 57-CC*

Response C.1:

Suitability of Voluntary Approaches Backed By Enforceable Authorities

Comment C.2: Several commenters noted that CZARA requires coastal states to have enforceable mechanisms for each management measure. They were not satisfied with the voluntary approaches Oregon was using to address many CZARA management measure requirements. They noted that the voluntary approaches were not being adhered to and that Oregon was not using its back-up authority to enforce and ensure implementation of the CZARA management measures, when needed. A few commenters also noted that Oregon has not described the link between the enforcement agency and implementing agency and the process the agencies use to take enforcement action when voluntary approaches are not adequate to protect water quality. Another commenter noted that voluntary approaches will not work and that the state needed to adopt approaches that could be enforced directly.

Source: 15-C, 15-D, 16-A, 28-E, 30-O, 46-H, 49-J

Response C.2:

Federal Government Taking Over Oregon's Coastal Nonpoint Program

Comment C.3: One commenter noted that NOAA and EPA have an obligation to step in for Oregon and take over its coastal nonpoint pollution control program since the state lacks the will to address its polluted runoff issues.

Source: 55-C

Response C.3:

Oregon Needs More Time to Develop Coastal Nonpoint Program

Comment C.4: A few commenters stated NOAA and EPA should give Oregon additional time to develop a fully approvable coastal nonpoint program. They noted that developing a program and addressing the remaining conditions NOAA and EPA placed on the state's program is very challenging and that the state has made significant progress since gaining conditional approval. They also noted that the state is continuing to make additional improvements, such as the rulemaking process to achieve better riparian protection for fish-bearing streams the Oregon Department of Forestry and Board of Forestry is currently undertaking, but that the state needs more time before the new rule is adopted.

A few other commenters noted that Oregon has had plenty of time since receiving conditional approval for its coastal nonpoint program in 1998 and that water quality is no better now that it was 16 years ago.

Source: 14-D, 33-C, 28-F

Response C.4:

CZARA Requires State to Address Issues that are Out of Its Control

Comment C.5: One commenter disagreed with the Coastal Nonpoint Program regarding its requirement that states have to meet all CZARA management measures. They noted that some measures, such as onsite sewage disposal systems, are often addressed at the local level, and therefore, outside of the state's jurisdiction.

Source: 10-B

Response C.5:

NOAA and EPA are Holding Oregon to a Higher Standard

Comment C.6: One commenter stated NOAA and EPA were holding Oregon to a higher standard than other states. Raising the approval threshold for Oregon compared to other states was unfair to Oregon. NOAA and EPA should focus on helping Oregon meet the previously established minimum standards for other state coastal nonpoint programs rather than requiring Oregon to meet a higher bar.

Source: 10-A

Response C.6:

Need to Take a Tailored Approach to NPS Control

Comment C.7: A few commenters were concerned that NOAA and EPA were applying a one-size-fits all approach to addressing nonpoint source pollution in Oregon by requiring the state to meet specific national management measures. They felt that a more tailored approach that considers Oregon's specific circumstances would be more appropriate.

Source: 8-C, 10-E

Response C.7:

Coastal Nonpoint Program Needs to Address Climate Change

Comment C.8: One commenter noted that Oregon's Coastal Nonpoint Program needs to address climate change; water shortages and toxins will become even more pressing issues as the climate continues to change.

Source: 50-A

Response C.8:

D. Water Quality, Designated Uses, and Monitoring

Status of Oregon Coastal Water Quality Should Inform NOAA and EPA Decision

Comment D.1: Many commenters noted the need for Oregon to do more to improve coastal water quality and designated uses. The fact that many coastal water quality problems in the state still exist demonstrates that Oregon's existing programs to control coastal nonpoint source pollution are inadequate and that the state needs to do more to strengthen its coastal nonpoint program. Specific concerns cited included failure to meet water quality standards, numerous TMDLs for temperature, sediment, and/or toxics, impaired drinking water, recent federal species listings under the Endangered Species Act for salmon, salmon habitat, amphibians and wildlife. For example, several commenters cited the recent federal listings for Southern Oregon Northern California Coast coho salmon as illustrative of how salmon populations and habitat have continued to decline, due, in part, to to human-related water quality and habitat impairments. Commenters specifically called out activities from timber harvesting, agriculture and urban development as a reason for these impairments.

Several other commenters noted that recent improvements in Oregon's coastal water quality and salmon runs demonstrate that the state's coastal nonpoint pollution control program is effective. One commenter stated that Oregon streams are among the cleanest in the country and provide good water for aquaculture. A few other commenters noted the good work and water quality and habitat improvements made by watershed groups, OWEB, Soil and Water Conservation Districts, and the voluntary efforts the timber industry and farmers (cattlemen) have implemented on their own. For example, one commenter cited an Oregon Department of Fish and Wildlife study that shows many out-migrating and returning salmon to Tillamook State forest land and described how collaborative restoration efforts of federal, state, county and private citizen groups have effectively worked together

to improve the Tillamook watershed. Another commenter stated there was too much focus on the need to see water quality improvements; rather, given the increase in population and other development pressures in recent decades, even maintaining water quality levels should be considered a success.

Source: 1-A, 1-B, 5-B, 8-A, 10-C, 11-A, 14-B, 15-E, 19-B, 19-E, 20-A, 20-D, 22-D, 25-A, 26-A, 28-F, 30-B, 30-I, 30-O, 31-B, 35-A, 35-B, 35-C, 39-A, 42-B, 42-C, 42-I, 43-F, 44-B, 48-C, 56-B, 57-GG, 57-VV, 82-C, 82-E, 83-C, 83-D

Response D.1:

Need Improved Water Quality Monitoring

Comment D.2: Several commenters stated their concern over the inadequacy of Oregon's water quality monitoring programs, especially related to monitoring after aerial application of pesticides and herbicides on forest lands. Commenters noted that Oregon doesn't have monitoring programs in place to adequately assess whether or not pollution controls are achieving their goals and protecting water quality. Therefore, it is difficult for the state to determine if and when additional management measures are needed as CZARA requires. Specific comments received about the state's failure to monitor water quality after pesticide and herbicide application on forest lands are addressed in the forestry section following.

Source: 2-A, 30-R, 42-G, 42-H, 46-H, 49-I, 57-BB

Response D.2:

Need Better Controls for Toxics

Comment D.3: Several commenters noted that Oregon needs to improve how it addresses nonpoint source pollution caused by toxics, including pesticides, herbicides, and superfund contaminants. Commenters noted there was excessive use of toxic chemicals in agriculture and forestry practices and that better riparian buffers were needed. One commenter was also concerned about superfund contamination impacting shellfish harvests.

Source: 2-B, 17-C, 32-A, 38-A, 41-A, 57-GG, 57-HH, 57-II

Response D.3:

Enforcement

Comment D.4: One commenter noted that Oregon fails to systematically address water quality standard violations caused by excess sedimentation.

Source: 57-UU

Response D.4:

E. New Development

Comment E.1: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for new development, specifically that the state has not provided a commitment to use its back-up authorities to ensure implementation of the management measure requirements when needed. However, a few commenters did not believe Oregon had an effective program to control stormwater runoff from new development and meet water quality standards. They noted that the state needed to do more than the voluntary program described. For example, one commenter noted that the TMDL Implementation Guidance must require (not recommend) DMAs to follow NPDES Phase II requirements for small MS4s. Another option that was suggested was that NOAA and EPA should require the state to incorporate the CZARA new development management measures into an existing NPDES General Permit or craft a new permit.

Not all commenters were supportive of new regulatory requirements to address the new development management measure. For example, one commenter preferred that the state use its existing authorities and stormwater permits more effectively rather than place additional requirements on small cities and counties. The commenter noted that small cities and counties are not the main source of impairment and often lack the technical expertise and financial resources to meet the new requirements. They suggested the coverage for the 1200C NPDES general permit could be expanded by decreasing the acreage threshold for the permit or using an approach similar to the 1200OCS permit used to address water quality problems in the Columbia Slough.

Source: 11-B, 13-B, 15-G, 34-B, 34-C, 34-D, 80-C

Response E.1:

F. Onsite Sewage Disposal Systems

Oregon Has Not Satisfied CZARA Requirements for OSDS; Voluntary Approach for OSDS Not Effective

Comment F.1: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for existing onsite sewage disposal systems, specifically ensuring routine inspections. While some commenters were supportive of the state's planned outreach efforts to promote voluntary inspections, they agreed with NOAA and EPA that Oregon does not have a tracking program in place to assess the effectiveness of its voluntary program nor has the state demonstrated a commitment to use its back-up enforcement authority to ensure inspections, when needed.

Other commenters were not supportive of Oregon's voluntary approach at all. They felt the state needed to require routine inspections and have more direct enforcement authorities. They noted Oregon's OSDS management program was not sufficient for meeting water quality standards and that enforcement action was minimal for existing leaking septic systems. One commenter noted that Dunes City passed an OSDS ordinance to require routine inspections because previous voluntary approaches did not work. Another commenter was concerned about several communities (Lane County and the City of Florence) allowing septic systems to be cited near lakes.

Source: 11-B, 12-B, 13-B, 15-G, 34-B, 34-5, 35-E, 48-A, 48-K

Response F.1:

Oregon Must Do More to Improve OSDS Management Before NOAA and EPA Approve State's Program

Comment F.2: A few commenters noted specific actions Oregon needs to take before NOAA and EPA approve the state's programs for meeting the OSDS management measure. Actions include: siting OSDS in locations where they are properly separated from groundwater; restricting system density to reduce nitrate input to groundwater; ensure proper sizing of the system to minimize concentrations of contaminants and prevent hydraulic overloading; requiring mandatory inspections every 3-5 years or at the time of property transfer; requiring mandatory pumping after each inspection whenever needed; establishing a step-by-step program for the state to help homeowners with grants and low-cost loans that need support for pumping or replacing failing systems; and establishing explicit enforcement mechanisms.

Source: 34-E, 48-J, 78-E

Response F.2:

Concerned with Sewage Discharge to Waterways During Rain Events

Comment F.3: One commenter noted that some communities, such as Myrtle Point and Powers, discharge sewage during rain events, preventing shellfish harvest.

Source: 17-B

Response F.3:

G. Critical Coastal Areas and Additional Management Measures

Process for Identifying Critical Coastal Areas and Additional Management Measures is Not Effective

Comment G.1: One commenter noted that Oregon's process for identifying critical coastal areas and the need for additional management measures, which relies largely on the state's Clean Water Act 303d listing process for impaired waters and TMDL program, is flawed in several ways. Specifically, the commenter notes Oregon's Clean Water Act 303d listing process is not effective. The state fails to meet the 303d list regulatory requirements to "assemble and evaluate all existing and readily available water quality related data and information to develop the list" and the state does not use nonpoint source assessments to develop its 303d lists. The commenter also stated that Oregon ignores a variety of technical information available to help identify land uses that consistently cause or contribute to water quality standard violations. In addition, the commenter noted that Oregon does not use TMDLs to identify critical coastal areas and assess where existing CZARA management measures are not adequate for meeting water quality standards, as required for CZARA approval. They also note that the associated TMDL water quality management plans do not support an effective coastal nonpoint program. For example, despite the numerous temperature TMDLs that have been developed in Oregon's coastal watershed, they note that load allocations have not been used to determine minimum riparian buffer width, height, or density to achieve the load allocation.

Source: 57-KK, 57-LL, 57-MM, 57-NN, 57-QQ, 57-RR, 57-SS, 57-TT

Response G.2:

A. Forestry

General—Impacts of Forestry Industry

Comment H.1: NOAA and EPA received mixed comments on its finding that Oregon failed to submit adequate management measures for forestry. Majority of commenters agreed that existing forest practices do not adequately prevent impacts to water quality or designated beneficial uses (e.g. fish spawning, migration, etc.) and additional management measures are needed. Commenters raised various issues associated with the forest industry. Impacts from clear cutting practices were described as contributing to water quality degradation and landslides. A few commenters discussed their concerns with impacts from logging and clear cutting and provided specific examples of impacts that result from forest roads contributing sediment to streams, landslides from clear cutting, inadequate buffers along streams, and the loss of fish spawning habitat. One commenter pointed out the adverse effects of pesticides on amphibians and crawfish in non-fish bearing streams. While another noted the effects of logging on restoration efforts of the Coho Salmon, citing a NOAA opinion for a potential ESA delisting of Coho Salmon.

Source: 57-F, 57-I, 63-B, 67-E, 67-F, 67-G, 70-C, 75-F

Response H.1:

General—Effectiveness of Existing Forest Practices and Programs

Comment H.2: Many commenters argued that current land use laws and the Forest Practices Act do not provide sufficient protection of Oregon streams and additional management measures for forest practices are necessary to have an approvable program under CZARA. Some commenters contend that the FPA is inconsistent with water quality standards and CZARA and the Oregon Department of Environmental Quality has failed to use its authority to address these inconsistencies. It was also noted that the lack of political will along with state tax benefits to timber industry contribute to the lack of resources state agencies have to improve degraded water quality. One commenter noted that compliance with forest practices regulations is not equal to compliance with water quality standards, and in most cases, enforcement occurs only after water quality damage has already occurred.

Conversely, a few commenters have argued that existing programs regulating forest practices are consistent with CZARA and that no additional management measures are needed. It was contended that the FPA adequately protects Oregon's watersheds and the Oregon CNP should be approved without conditions. It was noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. One commenter argued that both EPA and NOAA have failed to show that Oregon's forest practices rules do not meet water quality and beneficial use objectives; on the contrary, a "large body of science" demonstrates that Oregon forest practices have a "neutral to positive" effect on aquatic life.

Source: 35-I, 57-D, 57-E, 57-F, 57-G, 57-H, 57-S, 57-V, 57-W, 70-C, 75-E, 75-G, 77-F, 77-G, 79-B, 79-C

Response H.2:

Forestry – FPA Meets CZARA Requirements

Comment H.3: One group commented that Oregon's Forest Practices Act "establishes a dynamic program that responds promptly and deliberately to environmental issues as they arise…" The group cited sections of the FPA related to forest practices and water quality. It pointed out that the FPA requires that water resources, including drinking water, be maintained and that BMPs be established as necessary to insure maintenance of water quality standards. The commenter contends that the language of this FPA provision adheres to the CZARA requirement that additional management measures be established to maintain applicable water quality standards. The commenter also noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. The commenter argued that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams, they have not cited any sources supporting these concerns.

Source: 77-F, 77-G, 77-M

Response H.3

Forestry – Riparian Management

Comment H.4: Many commenters agreed that the State has not done enough to prevent polluted runoff elated to timber harvesting and riparian protection. One comment stated that existing piecemeal approaches are not sufficient. Commenters have expressed their concerns for impacts to fish and drinking water and contend that water quality is and should be a priority for Oregon's watersheds. They argue the State must increase protection for small and medium fish bearing streams and non-fish streams and acknowledge that stream protection proposals have been introduced in the past but have yet to be approved.

Commenters describe how existing riparian buffer rules for these streams are not adequate for ensuring good drinking water quality or protection of fish bearing streams. One commenter pointed out how Oregon is behind California and Washington in regard to setbacks, the notification or application process and consequences for non-compliance. Examples provided by commenters illustrate how existing buffers are too narrow or even non-existent due to clear cutting. One commenter noted the lack of buffers on non-fish streams make sedimentation a constant issue. It was also pointed out that excess sediment entering public waters from logging roads and chemicals (fertilizers, herbicides and pesticides) applied in riparian areas result in carcinogens and other toxins making their way into Oregon's drinking water and fish-bearing streams.

Others agree with the need for additional management measures but contend that the federal agencies need to work with Oregon to address the remaining concerns while keeping in mind the political challenges Oregon faces. The idea was presented that "Thoughtful science" should be provided when addressing these challenges. Moreover, maintaining support of the forest industry is also important for water quality protection.

One commenter contended that additional riparian setbacks would only hurt the logging industry and drive lumber prices up.

Source: 4-C, 13-B, 14-D, 20-B, 24-C, 28-B, 30-E, 30-K, 30-L, 30-M, 35-I, 35-J, 40-A, 43-E, 44-D, 46-C

Response H.4:

Forestry – Landslide Management

Comment H.5: Some commenters acknowledged that landslides caused by logging practices such as clear cutting are a real problem in Oregon and additional management measures are necessary to address these impacts. It was noted that Oregon does not have sufficient programs in place to control non-point pollution from forestry practices, particularly due to logging on private lands.

Others expressed their disagreement with the federal agencies' recent decision and argued that the evidence provided by the federal entities was misleading, only focusing on "landslide density relationships" rather than considering the "total number of landslides triggered during major storms". If consider the latter, one would see that the "potential increases in sediment delivery to public resources from landslides.. is proportionally small". In addition, it was argued that EPA has not offered objective evidence that additional management measures are needed to maintain water quality. It was recommended that EPA consider a broader scale view over longer timeframes to evaluate whether water quality and designated uses are impaired. The commenter added that the federal agencies have not produced any evidence that landslides resulting from forest management activities have caused exceedances in water quality or negatively impacted aquatic life.

Source: 61-A, 63-B, 67-B, 77-J, 77-K, 77-L

Response H.5:

Forestry – Road Management

Comment H.6: One group commented that there is no program in place to control non-point pollution sufficiently to meet CZARA and management measures are needed to maintain water quality and protect designated beneficial uses due to logging impacts. Examples of logging roads and associated impacts to watersheds and habitat were noted by various commenters. Speaking to current forest practice rules, another group commented that "generic BMPs" are imposed and are not backed by relevant water quality data and so fail at protecting water quality and beneficial uses. The group added that existing rules for forest roads are vague and prioritize logging over protection of water quality. One argument stated that Oregon's road location rule, which only requires operators to minimize risk to streams rather than requiring them to avoid water quality problems, is not sufficient. Other examples given demonstrating the inadequacies of the current forest practices rules include how they are not designed to eliminate delivery of fine sediment or to ensure that delivery does not impair water quality and they do not require that existing, inactive logging roads or "legacy roads" be brought into compliance with water quality standards.

Another group made the argument that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams and have requested that the state enact an inventory and

reporting program for forest roads, they have not cited any sources supporting these concerns and have presented no basis for the request. The commenter contends that new rule revisions (2002 – 2003) and success under the Oregon Plan for Salmon and Watersheds were detailed in the State's submission and are evidence that the Oregon Forest Practices Act is working as it should and the Board of Forestry is committed to implement additional management measures for forestry roads as needed. They also note that salmon stocks are recovering.

Source: 57-D, 57-I, 57-N, 57-O, 57-P, 57-R, 57-T, 57-U, 67-B, 75-D, 77-M, 77-N, 77-O, 77-P, 77-Q, 77-P, 77-Q

Response H.6:

Forestry – Pesticides Management

Comment H.7: Many commenters voiced concerns about pesticide and herbicide use associated with the forest industry in Oregon, especially using aerial spraying as a method of applying these chemicals. Adverse impacts to drinking water sources, designated uses, and habitats were among the list of issues commenters raised. Stories of chemicals used in forest practices found in local streams and in state residents were reported. Some believe that Oregon coastal watersheds are not adequately protected from pesticides and herbicides. A few noted that existing buffers are ineffective including existing no-spray buffers around fish-bearing streams, which are considered to be too small and non-fish bearing streams are not protected at all. One commenter suggested a pesticide-free buffer around certain land uses such as schools. One commenter discussed how certain herbicide chemical properties allow for them to persist in the environment and are eventually carried downstream to fish. It was noted that not enough is known about the interactions of chemicals when mixed. Moreover, it was expressed that additional research is needed to determine if aerial spraying of herbicides in forest industry is a necessary method of application.

One group contended that existing water quality monitoring activities for non-fish bearing streams during and after spraying herbicides has shown no "detrimental impacts" and Oregon continues to support monitoring that would identify potential problems if any arise. The commenter added that there have been changes over the years in chemical labeling and how chemicals are applied to forests. The commenter pointed out that pesticide applicators are licensed and along with landowners are already subject to stringent regulations and guidelines under the FPA.

Source: 62-B, 62-C, 69-C, 70-C, 70-D, 70-E, 70-G, 70-J, 72-B, 75-C, 76-A, 76-C, 77-R, 77-S, 77-T, 85-D, 85-E

Response H.7:

Forestry – Inadequate Pesticide Monitoring After Use by Forestry Industry

Comment H.8: In addition to their general concern about pesticide use by the forest industry and inadequate riparian buffers when pesticides are applied, several commenters expressed their concern about the inadequacy of the Oregon's water quality monitoring efforts following aerial application of pesticides and herbicides on forestry lands. They gave many examples of how they believe drinking water, human health, and fish and wildlife have been impaired by aerial spraying. However, they noted without effective monitoring protocols the state lacked data to prove aerial application was a problem and improvements were needed. For example, one commenter stated there was no monitoring of aerial drift even though the Oregon Health Administration said chemicals could drift two to four miles.

Another commenter also noted there was little to no coordination between DEQ and ODF on pesticide monitoring. One commenter also questioned NOAA and EPA's praise of Oregon's Water Quality Pesticide Management Plan. They noted that while the state purportedly uses water monitoring data to develop adaptive management approaches, the state actually undertakes very little pesticide monitoring and that there is no evidence the state collects any data in coastal watersheds.

Source: 30-R, 42-G, 42-H, 46-H, 49-I, 57-II

Response H.8:

Forestry - Clear Cuts

Comment H.9: Commenters expressed their concerns with the clear cutting practice associated with the logging industry. They disagreed with the amount of clear cutting that occurs, including the FPA rule, which allows up to 120 acres. The point was made that the rule did not consider cumulative impacts. Commenters discussed the impacts to water quality associated with clear cutting, particularly when combined with a lack of riparian buffers and sprays. In addition, the problem of clear cutting on steep, erosional slopes, which contributes to landslide problems and further impacts water quality. One commenter argued that clear cutting is not sustainable and Oregon needs to practice sustainable forestry. Commenters provided examples of impacts resulting from clear cutting including extensive clear cutting that has occurred in riparian areas around watersheds, including waterways that provide drinking water, despite having steep slopes and erosive soils; and clear cutting that has occurred in areas with designated spotted owl sites and high risk areas.

Source: 12-A, 40-A, 42-D, 43-D, 53-F. 75-B, 75-C, 75-D,

Response H.9:

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I. Agriculture

General—Ability of Oregon's Agricultural Programs to Meet CZARA Requirements

Comment I.1: Some commenters noted that they did not believe Oregon had satisfied the CZARA requirements for Agriculture and the conditions related to the agriculture management measures that NOAA and EPA placed on Oregon's Coastal Nonpoint Program. They believed Oregon has failed to control polluted runoff from agriculture activities and that water quality and designated use impairments were still occurring due to agricultural activities. Various points were made about the ineffectiveness of existing enforcement and monitoring efforts as well as the inadequate management approaches and programs the state relies on to meet the CZARA requirements (see specific comments below for detailed examples). Other commenters felt strongly that the state had satisfied the CZARA agriculture management measures and the conditions placed on its program related to agriculture (see specific comments below for detailed examples). They noted that finding otherwise would be

unreasonable and would not be in line with CZARA requirements. Some commenters also noted finding that the state has not submitted an approvable program for agriculture would punish of the agriculture community.

Source: 44-F, 49-G, 64-C, 65-F, 66-C, 68-C

Response I.1:

General –Effectiveness of the Agriculture Water Quality Management Area Program and Plans for Meeting the CZARA Management Measures

Comment I.2: Several commenters expressed concerns with the effectiveness of the state's Agriculture Water Quality Management Area (AWQMA) Program for addressing polluted runoff. They did not believe the program enabled Oregon to meet CZARA requirements. However, other commenters were supportive of the program and thought it did enable the state to meet its CZARA agriculture requirements.

Specifically, commenters that were concerned about the adequacy of the AWQMA Program, noted that current agricultural water quality management area rules are insufficient to meet water quality standards and TMDL load allocations. They also stated that there is inadequate enforcement of the rules and lack of an implementation plan to ensure that agricultural landowners' voluntary actions occur. Oregon Department of Agriculture (ODA) largely relies on voluntary actions by landowners to adhere to the AWQMA rules and meet water quality standards. For example, one commenter, who is an agriculture landowner and a member of an Agricultural Water Quality Management Area (AWQMA) local advisory committee, discussed how the committee was informed that the AWQMA plan would be complaint driven and compliance was voluntary. The commenter questioned the effectiveness of this approach when ODA only issued three fines over the last eleven years.

Other commenters that felt Oregon had satisfied its CZARA agriculture management measure requirements and conditions through the AWQMA Program, noted that the coastal AWQMA plans directly reference the 6217(g) agriculture management measures and that ODA has the authority to require management measures that meet CZARA requirements or impose additional measures if necessary. They also believed the AWQMA plans and rules had sufficient goals and policies for improving water quality within coastal watersheds.

These commenters also described how ODA works with ranchers and farmers to modify, reduce and remove ineffective agriculture practices. Commenters noted that farmers have worked hard to meet or exceed water quality standards by working with the state to develop Agricultural Water Quality Management Plans, which set watershed goals and investment priority areas that enhance water quality. They added that this planning also requires ODA to implement site-specific and site-appropriate controls, which are "designed to address actual water quality issues with economically achievable measures", which aligns with CZARA's requirements for economically achievable management measures. Several farmers noted that they willingly participated in the AWQMA and voluntary programs because they had the understanding that the AWQMA Program and there voluntary efforts would meet all federal and state regulatory requirements for agriculture.

Commenters noted the success of the state's AWQMA Program and voluntary efforts over the years. For example, one commenter noted between 1998-2012, OWEB contributed nearly $18 millions for coastal

agriculture projects and over an additional $5M was provided in-kind support from SWCDs and landowners. These efforts were able to restore over 950 linear stream miles and improved agricultural practices that impacted over 2,750 acres of farmland. In addition, landowners voluntarily enrolled thousands of acres of farmland in federal programs designed to improve water quality.

Various groups represented by one comment letter contended that the Agricultural Water Quality Management Plans and rules meet and exceed the requirements of CZARA. They pointed out that agricultural land use represents approximately five percent of land uses within the coastal zone and the primary agricultural land use of that five percent is pasture or hay agriculture resulting in lesser impacts to water quality. They argued that most agriculture landowners comply with existing water quality management rules and meet relevant CZARA requirements and there is an existing process in place to address noncompliance instances. They also contended that CZARA requires the State and its agencies to use its authority to enforce a water quality program that meet or exceed 16 U.S.C. 1455b requirements and that ODA has demonstrated it has used its authority to enforce AWQMP rules where necessary and appropriate in the state's July 2013 submission.

Other commenters also asserted that the ODA has the ability to enforce the AWQMA program and ensure compliance with water quality requirements. They refute claims by others that few ODA enforcement actions over the years demonstrate that ODA does not have the ability and/or will to enforce the AWQMA program and ensure water quality is protected. On the contrary, the commenter notes that when a problem is identified, ODA first works closely with the noncompliant landowner to make necessary land use changes voluntarily before turning to enforcement. Therefore, most issues are corrected before an enforcement action is needed. Commenters highlighted the existing review and monitoring processes ODA has enacted to track program "implementation and effectiveness".

Source: 57-CC, 57-EE, 64-C, 64-F, 65-B, 65-C, 65-D, 65-E, 65-F, 66-C, 66-F, 68-C, 68-F, 71-A, 71-B, 71-C, 71-G, 71-K, 71-N, 71-Q, 72-A, 73-A, 78-H, 78-I

Response I.2:

General—Inadequacy of Oregon Water Resources Department's (OWRD) Water Use Basin Program for Meeting Irrigation Management Measure

Comment I.3: Another group commented that the Oregon Water Resources Department's (OWRD's) Water Use Basin Program is inadequate for meeting CZARA requirements for agriculture. They suggested that NOAA and EPA were incorrect when finding that OWRD's Water Use Basin Program supports the irrigation measure and reiterated that Oregon's Basin Programs do not ensure that water quality and habitat for sensitive and endangered species will not be impaired. They urged EPA and NOAA to look closely at the deficiencies of the Basin Programs before attributing any water quality or fish habitat protection value to them as a measure in support of Oregon's agricultural conditions. They added that Oregon's rules provide no assurance that water use will be adequately limited to maintain minimum flows and Basin Programs fail in practice to protect minimum perennial streamflows and instream rights held by OWRD for the protection of aquatic wildlife and water quality. They concluded that EPA should disapprove Oregon's agricultural measures and acknowledged the lack of protection offered by Oregon's Water Use Basin Programs for preservation of aquatic life and designated uses in the agencies' final determination.

Source: 65-B, 65-C, 65-D, 65-E, 65-F

Response I.3:

Agriculture-Buffers

Comment I.4: Various commenters noted the need for adequate buffers along both fish and non-fish bearing streams to protect water quality, including cold water temperatures needed for the recovery and health of native salmon. It was noted that Oregon lacks necessary management measures for riparian protection to help meet water quality standards and to protect coho salmon, amphibians, and drinking water. Another commenter noted too that Oregon has failed at controlling polluted runoff caused by erosion and sedimentation from agricultural lands and destruction of riparian areas by livestock. On the other hand, it was pointed out that farmers and ranchers have installed many miles of piping for livestock watering, and have planted and fenced many miles of stream banks.

One commenter spoke about her experience serving as an advisory member to the Mid-Coast Basin Agricultural Area Advisory Committee during its local area planning in 2009. The commenter explained that when specific buffer proposals were presented to the committee, "All of the specific proposals for riparian protection were rejected by the committee, despite their knowledge of specific water quality problems in the basin created or exacerbated by inadequate riparian vegetation, including stream temperature problems and bacterial contamination from livestock".

However, other commenters asserted that the AWQMA plans do require buffers. They noted that CZARA does not specifically require riparian buffers for agriculture. If NOAA and EPA do require a blanket riparian buffer for agriculture lands through the Coastal Nonpoint Program, it would be taking a "one-size-fits all" approach that goes against the inherent flexibility that CZARA provides the states.

Source: 15-H, 44-F, 49-G, 55-E, 71-R, 72-A, 81-A, 83-E, 83-F, 83-L

Response I.4:

Agriculture-Pesticides

Comment I.5: Commenters expressed their concerns with the amounts of pesticides being applied and lack of management measures in place to address pesticide use over agricultural lands. One commenter emphasized the importance of adequately managing pesticide spraying to protect human health from exposure. The commenter referenced a local case where sudden poor health suffered by residents appeared to be related to their exposure to pesticide sprays. Commenters reiterated that no pesticide management measures are being implemented over Oregon's agricultural lands, and the Oregon Department of Agriculture's pesticide use programs fail to control polluted runoff from pesticide use on agriculture lands.

One commenter noted that NOAA and EPA's rationale for agriculture does not make any findings about the adequacy of Oregon's program to protect water quality and designated uses from pesticides applied to agricultural lands. They noted that Oregon's management measures for pesticides are not adequate to meet water quality standards or support designated uses and additional management measures to address pesticides are needed. Another commenter and member of an Agricultural Water Quality

Management Area local advisory committee questioned how the committee was advised to not consider pesticides as a pollutant.

One group also described a herbicide monitoring program that found polluted runoff from all types of herbicide land application, including agriculture operations. They noted that while applicators may have applied the herbicide correctly, runoff was still occurring, indicating the state's rules were ineffective at protecting water quality from herbicide application.

On the contrary, another commenter pointed to the state's Pesticide Stewardship Program, CAFO and AQWMA programs are already in place to address any related pesticide issues.

Source: 28-D, 57-GG, 57-HH, 59-A, 81-B, 83-A, 83-E, 83-M

Response I.5:

Agriculture-Extent of Nonpoint Source Pollution from Agriculture

Comment 1.6: Several commenters noted that NOAA and EPA did not support their claim that nonpoint source problems from agriculture are widespread. The stated that the draft salmon listings and recovery plan findings are based on opinion and anecdotal evidence and unsupported by scientific fact. Therefore, commenters requested that the agencies' references to the coho salmon listings and recovery plan findings as they relate to agriculture impacts to water quality be removed. They also noted that Oregon has already developed water quality standards designed to protect designated uses (including coho salmon and other endangered or threatened fish species) and this program adequately addresses activities to ensure protection of these species. They contended that most ambient water quality monitoring reports indicate "fair to excellent water quality" and sites with poor conditions are not due to agricultural activities.

Source: 64, 66, 68, 70-O, 71-M

Response I.6:

Agriculture- Need for Additional Management Measures

Comment I.7: Multiple commenters noted that Oregon needed to implement additional management measures for Agriculture to meet water quality standards and to protect designated uses. Specifically, they noted that in most cases, allowable temperature increases for nonpoint source pollutants is zero, so it is very likely that agriculture activities are contributing to violations of temperature standards. In addition, none of the Agriculture Water Quality Management Plan Basin rules incorporate additional management measures needed to meet the zero load allocations established in the existing temperature TMDLs for Oregon coastal watersheds.

Several commenters suggested specific additional management measures to protect water quality. Several commenters noted minimum riparian buffers needed to be established. One commenter noted that published literature suggested that the minimum width should be now less than 100 feet (30 meters) and that greater than 100 foot buffers may be needed in certain areas, such as low gradient meandering channels that are adjacent to designated critical habitat for listed species. Other additional

management measures that commenters identified included fencing streams and riparian areas to reduce impacts by livestock, improved permitting, monitoring and relocation of CAFOs, and regulatory provisions to promote the establishment of riparian vegetation in critical habitat areas and to promote beaver reintroduction in suitable locations.

On the other hand, several commenters asserted that additional management measures for agriculture were not needed. The commenters noted that EPA and NOAA have not provided specific data or information that would support the need for additional management measures, many of which may be "economically achievable". They noted that CZARA does not have specific requirements for riparian buffers on agriculture land, restoration of lands to pre-agricultural uses, additional management measures that do not result in reduced nonpoint source pollution. In addition, they note that, per the CZARA statute, all management measures must be "economically achievable."

Source: 15-H, 23-B, 44-C, 47-B, 56-M, 57-CC, 57-EE, 60-E, 64-E, 66-E, 68-E, 71-H

Response I.7:

Agriculture-Addressing Legacy Agriculture Issues

Comment I.8: A few commenters expressed their concern about legacy agriculture issues, such as where riparian vegetation may have regrown on former agriculture land but the buffer is comprised of largely invasive species (i.e., blackberry brambles) and does not provide sufficient protection of stream water quality or create quality habitat. They believed that Oregon needed to adopt additional management measure requirements to address this legacy issue.

Another commenter, representing various groups, was troubled by NOAA and EPA's assertion in the proprosed findings, that AWQMA planning and enforcement do not address "legacy" issues created by agriculture activities that are no longer occurring. The commenter stated that neither CZARA nor the 6217(g) guidance define legacy issues or require that state coastal nonpoint programs address legacy issues. They noted that despite this, the Oregon Watershed Enhancement Board still invests money to address legacy agricultural issues. They added that Oregon does have a process in place to identify opportunities to enhance and restore watersheds, including "legacy" issues, "through the Oregon Plan for Salmon and Watersheds, the Oregon Aquatic Habitat Restoration and Enhancement Guide, OWEB riparian restoration projects, Area Plans, and many other federal, public and private partnerships. These programs are successful due to the voluntary efforts of many Oregon agriculture landowners".

Source: 44-F, 57, 71-T

Response I.8

Agriculture-Effectiveness of Existing Monitoring and Tracking Programs

Comment I.9: Several commenters expressed their concern with Oregon's existing monitoring and tracking efforts to evaluate the effectiveness of its agriculture programs and where improvements are needed. Although a few commenters acknowledged ODA's new strategy for more targeted water quality monitoring is a step forwarded, they believed a much more robust monitoring program was needed to understand when adaptive approaches are needed.

Another group acknowledged a significant gap in the existing science around the effectiveness of Oregon's agricultural practices in protecting water quality and designated uses. They noted that the state cannot move forward with stronger agriculture regulations without first having a good understanding of how its existing program programs are falling short and what improvements are needed to ensure water quality standards are being met.

Other commenters believed the state's existing monitoring and tracking efforts were effective at assessing implementation of agriculture practices. Specifically they noted that biennial reviews of the AWQMA plans, with about 18 reviews done each year, provide a way to track plan implementation. They also highlighted the state's efforts to develop a more formalized evaluation processes through the Strategic Implementation Areas and Focus Areas process to effectively target priority areas and issues. They also noted that the state's new Enterprise Monitoring Initiative, which began in 2012, monitors waterways passing through agriculture lands and can be used to inform the effectiveness of the AWQMA program.

Source: 71-S, 73-A, 79-I

Response I.9

J. Hydromodification

Comment J.1: A couple of commenters discussed the negative impacts of hydromodification, noting the effects of dams on water quality and habitat and impacts from channel modification. They declared that Oregon has failed to control polluted runoff from eroding stream banks and shorelines and it does not have programs in place to protect and restore channel conditions from modification.

Source: 46-H, 49-F

Response J.1:

K. Wetland

Comment K.1: One commenter noted that Oregon does not have programs in place to protect and restore riparian areas needed to maintain cool stream temperatures and habitat or to protect and restore wetlands.

Source: 49-F

Response K.1:

Other Comments—Not Responsive?

The Public Comment Period

Comment: One commenter questioned why NOAA and EPA requested public comment on their proposed decision. They noted public comment was needed as long as the federal agencies' decision and analysis is based on established criteria and valid science which they believed to be the case.

Source: 15-B

Response:

Importance of Beavers

Comment: One commenter expressed their concern over diminishing beaver because they are being trapped and hunted out. They note that beavers play an important role in maintain natural stream channels, wetlands, and complex floodplains.

Source: 44-G

Response:

Proposed Decision Exceeds NOAA and EPA's Authority

Comment: One commenter noted that the Federal Government places too many regulations on the states, private property owners, and individuals and that NOAA and EPA exceeded the limits defined by the U.S Constitution. The commenter suggested that Congress should remove the budgets for NOAA and EPA and return those funds back to the state.

Source: 29-A

Response:

Summary of NOAA and EPA Response to Comments Regarding the Agencies' Proposed Finding that Oregon has Failed to Submit a Fully Approvable Coastal Nonpoint Program

A. **General Comments**

Proposed Decision

Comment A.1: The majority of commenters supported NOAA and EPA's proposed finding that Oregon has failed to submit a fully approval coastal nonpoint program under Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA). In addition to specific concerns addressed in other sections below, commenters noted that 16 years after receiving conditional approval for its coastal nonpoint program, Oregon still does not have an adequate program in place to control polluted runoff to coastal waters and protect designated used, nor has the state adopted additional management measures for forestry where water quality impairments and degradation of beneficial uses attributable to forestry exist despite implementation of the (g) measures. Commenters also noted that the state failed to follow through on its 2010 commitments to NOAA and EPA—commitments NOAA and EPA used to inform their settlement agreement deadlines with the Northwest Environmental Advocates—to address three remaining conditions on its program related to new development, septic systems, and forestry by March 2013.

While some commenters agreed that Oregon did need to do more to improve water quality, they did not agree with NOAA and EPA's proposed decision because they opposed withholding federal funding under CZMA Section 306 and CWA Section 319, two programs that help to improve water quality and restore habitat. A few commenters noted NOAA and EPA should continue to work with Oregon to improve its water quality programs and that the state just needed additional time to meet the CZARA requirements.

Other commenters opposed NOAA and EPA's proposed finding. Generally, they stated Oregon did have adequate programs in place to meet, or in some cases exceed, the CZARA requirements and control polluted runoff. More specific comments are discussed in sections below.

Source: 1-C, 2-B, 4-A, 5-A, 8-B, 9-A, 13-A, 14-A, 14-C, 15-A, 16-B, 17-A, 19-B, 22-A, 22-C, 23-A, 24-A, 25-A, 25-B, 26-B, 28-A, 30-A, 30-B, 30-H, 31-A, 33-A, 33-B, 34-A, 35-A, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 40-A, 41-A, 42-A, 42-B, 43-A, 44-A, 44-B, 46-A, 47-A, 48-B, 49-A, 53-A, 52-A, 54-A, 55-B, 56-C, 57-A, 64-B, 64-D, 66-B, 66-D, 68-B, 68-D

Comment [AC1]: Need to check coding on higher numbered comments. There are many more that should be reflected here.

Response A.1:

State Legislature Has Been Obstructing ODEQ's Ability to Make Changes

Comment A.2: One commenter stated that the Oregon Department of Environmental Quality has been working hard to get the improvements needed to improve water quality and meet all coastal nonpoint program requirements. However the State Legislature has been obstruction ODEQ's progress and is the one that needs to take action.

Source: 25-C

Response A.2:

Federal and State Governments Have Responsibility to Manage Waters

Comment A.3: One commenter stated that the Federal and state governments have a responsibility to manage waters in the public trust for maximum long-term benefit for current and future generations. They noted this was not being done.

Source: 22-C

Response A.3:

B. Funding

Impacts of Withholding Funds

Comment B.1: Commenters recognized that withholding funds under Section 306 of the Coastal Zone Management Act (CZMA) and Section 319 of the Clean Water Act (CWA) could negatively impact the state's ability to improve quality and support beneficial programs such as Total Maximum Daily Loads (TMDLs), Oregon Watershed Enhancement Board (OWEB) watershed planning and restoration projects, local land use planning, and the provision of technical assistance to coastal communities to help them address pressing coastal management issues such as coastal hazards, stormwater management, and growth management. A few commenters were against NOAA and EPA withholding funds from these programs because they felt withholding funding from two important programs for addressing polluted runoff and coastal habitat issues in the state would be counterproductive and would likely not result in the policy and programmatic changes NOAA and EPA seek. Others noted that withholding funding would hurt two state programs and agencies, Oregon's Coastal Management Program in the Department of Land and Conservation and Development and Oregon's Nonpoint Source Management Program in the Department of Environmental Quality, that have very little (if any) influence over the most significant remaining issues (i.e., forestry and agriculture). Some commenters also noted that withholding funds would negatively impact coastal communities and watershed groups that also rely on this funding from NOAA and EPA.

Other commenters supported withholding funds even though they acknowledged it may have some negative impacts initially. They saw withholding funding as the only way to get action in the state to improve water quality and protect designated used. One commenter also noted that NOAA and EPA's failure to withhold funding sooner allowed Oregon to limp along for over 16 years with inadequate management measures for its coastal nonpoint program while drinking water and other water quality impairments occurred.

Source: 1-C, 5-A, 8-B, 14-C, 16-B, 17-A, 25-A, 25-B, 25-D, 25-E, 25-F, 33-A, 33-B, 36-A, 36-B, 36-C, 37-B, 37-C, 37-D, 43-A, 48-B, 55-B, 64-B, 66-B, 68-B,

Response B.1:

Oregon Stands to Lose $4 million in federal funding.

Comment B.2: Several commenters stated that if NOAA and EPA's proposed finding that Oregon has failed to submit a fully approvable coastal nonpoint program stands, Oregon would lose $4 million in federal funding.

Source: 1-C, 14-C, 43-A

Response B.2:

C. Authorities Under CZARA

NOAA and EPA's Authority to Require Additional Management Measures

Comment C.1: A few commenters stated NOAA and EPA does not have the authority to require Oregon to develop additional management measures that go beyond the original management measures in the CZARA guidance. [***more details***]

Comment [AC2]: Add comment about authority to require add MMs.

Other commenters noted that CZARA requires Oregon to demonstrate that it has additional management measures in place to meet water quality standards and protect designated uses. The commenters noted that Oregon has not met this requirement since water quality standards are still not being met and designated uses are not being protected. They were supportive of placing additional management measure requirements on Oregon's coastal nonpoint program and suggested specific measures or nonpoint source issues the additional measures needed to address (see specific comments below).

*Source: ***, 15-E, 28-E, 30-B, 30-O, 57-CC*

Response C.1:

Suitability of Voluntary Approaches Backed By Enforceable Authorities

Comment C.2: Several commenters noted that CZARA requires coastal states to have enforceable mechanisms for each management measure. They were not satisfied with the voluntary approaches Oregon was using to address many CZARA management measure requirements. They noted that the voluntary approaches were not being adhered to and that Oregon was not using its back-up authority to enforce and ensure implementation of the CZARA management measures, when needed. A few commenters also noted that Oregon has not described the link between the enforcement agency and implementing agency and the process the agencies use to take enforcement action when voluntary approaches are not adequate to protect water quality. Another commenter noted that voluntary approaches will not work and that the state needed to adopt approaches that could be enforced directly.

Source: 15-C, 15-D, 16-A, 28-E, 30-O, 46-H, 49-J

Response C.2:

Federal Government Taking Over Oregon's Coastal Nonpoint Program

Comment C.3: One commenter noted that NOAA and EPA have an obligation to step in for Oregon and take over its coastal nonpoint pollution control program since the state lacks the will to address its polluted runoff issues.

Source: 55-C

Response C.3:

Oregon Needs More Time to Develop Coastal Nonpoint Program

Comment C.4: A few commenters stated NOAA and EPA should give Oregon additional time to develop a fully approvable coastal nonpoint program. They noted that developing a program and addressing the remaining conditions NOAA and EPA placed on the state's program is very challenging and that the state has made significant progress since gaining conditional approval. They also noted that the state is continuing to make additional improvements, such as the rulemaking process to achieve better riparian protection for fish-bearing streams the Oregon Department of Forestry and Board of Forestry is currently undertaking, but that the state needs more time before the new rule is adopted.

A few other commenters noted that Oregon has had plenty of time since receiving conditional approval for its coastal nonpoint program in 1998 and that water quality is no better now that it was 16 years ago.

Source: 14-D, 33-C, 28-F

Response C.4:

CZARA Requires State to Address Issues that are Out of Its Control

Comment C.5: One commenter disagreed with the Coastal Nonpoint Program regarding its requirement that states have to meet all CZARA management measures. They noted that some measures, such as onsite sewage disposal systems, are often addressed at the local level, and therefore, outside of the state's jurisdiction.

Source: 10-B

Response C.5:

NOAA and EPA are Holding Oregon to a Higher Standard

Comment C.6: One commenter stated NOAA and EPA were holding Oregon to a higher standard than other states. Raising the approval threshold for Oregon compared to other states was unfair to Oregon. NOAA and EPA should focus on helping Oregon meet the previously established minimum standards for other state coastal nonpoint programs rather than requiring Oregon to meet a higher bar.

Source: 10-A

Response C.6:

Need to Take a Tailored Approach to NPS Control

Comment C.7: A few commenters were concerned that NOAA and EPA were applying a one-size-fits all approach to addressing nonpoint source pollution in Oregon by requiring the state to meet specific national management measures. They felt that a more tailored approach that considers Oregon's specific circumstances would be more appropriate.

Source: 8-C, 10-E

Response C.7:

Coastal Nonpoint Program Needs to Address Climate Change

Comment C.8: One commenter noted that Oregon's Coastal Nonpoint Program needs to address climate change; water shortages and toxins will become even more pressing issues as the climate continues to change.

Source: 50-A

Response C.8:

D. Water Quality, Designated Uses, and Monitoring

Status of Oregon Coastal Water Quality Should Inform NOAA and EPA Decision

Comment D.1: Many commenters noted the need for Oregon to do more to improve coastal water quality and designated uses. The fact that many coastal water quality problems in the state still exist demonstrates that Oregon's existing programs to control coastal nonpoint source pollution are inadequate and that the state needs to do more to strengthen its coastal nonpoint program. Specific concerns cited included failure to meet water quality standards, numerous TMDLs for temperature, sediment, and/or toxics, impaired drinking water, recent federal species listings under the Endangered Species Act for salmon, salmon habitat, amphibians and wildlife. For example, several commenters cited the recent federal listings for Southern Oregon Northern California Coast coho salmon as illustrative of how salmon populations and habitat have continued to decline, due, in part, to to human-related water quality and habitat impairments. Commenters specifically called out activities from timber harvesting, agriculture and urban development as a reason for these impairments.

Several other commenters noted that recent improvements in Oregon's coastal water quality and salmon runs demonstrate that the state's coastal nonpoint pollution control program is effective. One commenter stated that Oregon streams are among the cleanest in the country and provide good water for aquaculture. A few other commenters noted the good work and water quality and habitat improvements made by watershed groups, OWEB, Soil and Water Conservation Districts, and the voluntary efforts the timber industry and farmers (cattlemen) have implemented on their own. For example, one commenter cited an Oregon Department of Fish and Wildlife study that shows many out-migrating and returning salmon to Tillamook State forest land and described how collaborative restoration efforts of federal, state, county and private citizen groups have effectively worked together

to improve the Tillamook watershed. Another commenter stated there was too much focus on the need to see water quality improvements; rather, given the increase in population and other development pressures in recent decades, even maintaining water quality levels should be considered a success.

Source: 1-A, 1-B, 5-B, 8-A, 10-C, 11-A, 14-B, 15-E, 19-B, 19-E, 20-A, 20-D, 22-D, 25-A, 26-A, 28-F, 30-B, 30-I, 30-O, 31-B, 35-A, 35-B, 35-C, 39-A, 42-B, 42-C, 42-I, 43-F, 44-B, 48-C, 56-B, 57-GG, 57-VV, 82-C, 82-E, 83-C, 83-D

Response D.1:

Need Improved Water Quality Monitoring

Comment D.2: Several commenters stated their concern over the inadequacy of Oregon's water quality monitoring programs, especially related to monitoring after aerial application of pesticides and herbicides on forest lands. Commenters noted that Oregon doesn't have monitoring programs in place to adequately assess whether or not pollution controls are achieving their goals and protecting water quality. Therefore, it is difficult for the state to determine if and when additional management measures are needed as CZARA requires. Specific comments received about the state's failure to monitor water quality after pesticide and herbicide application on forest lands are addressed in the forestry section following.

Source: 2-A, 30-R, 42-G, 42-H, 46-H, 49-I, 57-BB

Response D.2:

Need Better Controls for Toxics

Comment D.3: Several commenters noted that Oregon needs to improve how it addresses nonpoint source pollution caused by toxics, including pesticides, herbicides, and superfund contaminants. Commenters noted there was excessive use of toxic chemicals in agriculture and forestry practices and that better riparian buffers were needed. One commenter was also concerned about superfund contamination impacting shellfish harvests.

Source: 2-B, 17-C, 32-A, 38-A, 41-A, 57-GG, 57-HH, 57-II

Response D.3:

Enforcement

Comment D.4: One commenter noted that Oregon fails to systematically address water quality standard violations caused by excess sedimentation.

Source: 57-UU

Response D.4:

E. New Development

Comment E.1: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for new development, specifically that the state has not provided a commitment to use its back-up authorities to ensure implementation of the management measure requirements when needed. However, a few commenters did not believe Oregon had an effective program to control stormwater runoff from new development and meet water quality standards. They noted that the state needed to do more than the voluntary program described. For example, one commenter noted that the TMDL Implementation Guidance must require (not recommend) DMAs to follow NPDES Phase II requirements for small MS4s. Another option that was suggested was that NOAA and EPA should require the state to incorporate the CZARA new development management measures into an existing NPDES General Permit or craft a new permit.

Not all commenters were supportive of new regulatory requirements to address the new development management measure. For example, one commenter preferred that the state use its existing authorities and stormwater permits more effectively rather than place additional requirements on small cities and counties. The commenter noted that small cities and counties are not the main source of impairment and often lack the technical expertise and financial resources to meet the new requirements. They suggested the coverage for the 1200C NPDES general permit could be expanded by decreasing the acreage threshold for the permit or using an approach similar to the 1200OCS permit used to address water quality problems in the Columbia Slough.

Source: 11-B, 13-B, 15-G, 34-B, 34-C, 34-D, 80-C

Response E.1:

F. Onsite Sewage Disposal Systems

Oregon Has Not Satisfied CZARA Requirements for OSDS; Voluntary Approach for OSDS Not Effective

Comment F.1: Many commenters agreed with NOAA and EPA's proposed finding that Oregon has failed to fully address CZARA requirements for existing onsite sewage disposal systems, specifically ensuring routine inspections. While some commenters were supportive of the state's planned outreach efforts to promote voluntary inspections, they agreed with NOAA and EPA that Oregon does not have a tracking program in place to assess the effectiveness of its voluntary program nor has the state demonstrated a commitment to use its back-up enforcement authority to ensure inspections, when needed.

Other commenters were not supportive of Oregon's voluntary approach at all. They felt the state needed to require routine inspections and have more direct enforcement authorities. They noted Oregon's OSDS management program was not sufficient for meeting water quality standards and that enforcement action was minimal for existing leaking septic systems. One commenter noted that Dunes City passed an OSDS ordinance to require routine inspections because previous voluntary approaches did not work. Another commenter was concerned about several communities (Lane County and the City of Florence) allowing septic systems to be cited near lakes.

Source: 11-B, 12-B, 13-B, 15-G, 34-B, 34-5, 35-E, 48-A, 48-K

Response F.1:

Oregon Must Do More to Improve OSDS Management Before NOAA and EPA Approve State's Program

Comment F.2: A few commenters noted specific actions Oregon needs to take before NOAA and EPA approve the state's programs for meeting the OSDS management measure. Actions include: siting OSDS in locations where they are properly separated from groundwater; restricting system density to reduce nitrate input to groundwater; ensure proper sizing of the system to minimize concentrations of contaminants and prevent hydraulic overloading; requiring mandatory inspections every 3-5 years or at the time of property transfer; requiring mandatory pumping after each inspection whenever needed; establishing a step-by-step program for the state to help homeowners with grants and low-cost loans that need support for pumping or replacing failing systems; and establishing explicit enforcement mechanisms.

Source: 34-E, 48-J, 78-E

Response F.2:

Concerned with Sewage Discharge to Waterways During Rain Events

Comment F.3: One commenter noted that some communities, such as Myrtle Point and Powers, discharge sewage during rain events, preventing shellfish harvest.

Source: 17-B

Response F.3:

G. Critical Coastal Areas and Additional Management Measures

Process for Identifying Critical Coastal Areas and Additional Management Measures is Not Effective

Comment G.1: One commenter noted that Oregon's process for identifying critical coastal areas and the need for additional management measures, which relies largely on the state's Clean Water Act 303d listing process for impaired waters and TMDL program, is flawed in several ways. Specifically, the commenter notes Oregon's Clean Water Act 303d listing process is not effective. The state fails to meet the 303d list regulatory requirements to "assemble and evaluate all existing and readily available water quality related data and information to develop the list" and the state does not use nonpoint source assessments to develop its 303d lists. The commenter also stated that Oregon ignores a variety of technical information available to help identify land uses that consistently cause or contribute to water quality standard violations. In addition, the commenter noted that Oregon does not use TMDLs to identify critical coastal areas and assess where existing CZARA management measures are not adequate for meeting water quality standards, as required for CZARA approval. They also note that the associated TMDL water quality management plans do not support an effective coastal nonpoint program. For example, despite the numerous temperature TMDLs that have been developed in Oregon's coastal watershed, they note that load allocations have not been used to determine minimum riparian buffer width, height, or density to achieve the load allocation.

Source: 57-KK, 57-LL, 57-MM, 57-NN, 57-QQ, 57-RR, 57-SS, 57-TT

Response G.2:

A. Forestry

General—Impacts of Forestry Industry

Comment H.1: NOAA and EPA received mixed comments on its finding that Oregon failed to submit adequate management measures for forestry. Majority of commenters agreed that existing forest practices do not adequately prevent impacts to water quality or designated beneficial uses (e.g. fish spawning, migration, etc.) and additional management measures are needed. Commenters raised various issues associated with the forest industry. Impacts from clear cutting practices were described as contributing to water quality degradation and landslides. A few commenters discussed their concerns with impacts from logging and clear cutting and provided specific examples of impacts that result from forest roads contributing sediment to streams, landslides from clear cutting, inadequate buffers along streams, and the loss of fish spawning habitat. One commenter pointed out the adverse effects of pesticides on amphibians and crawfish in non-fish bearing streams. While another noted the effects of logging on restoration efforts of the Coho Salmon, citing a NOAA opinion for a potential ESA delisting of Coho Salmon.

Source: 57-F, 57-I, 63-B, 67-E, 67-F, 67-G, 70-C, 75-F

Response H.1:

General—Effectiveness of Existing Forest Practices and Programs

Comment H.2: Many commenters argued that current land use laws and the Forest Practices Act do not provide sufficient protection of Oregon streams and additional management measures for forest practices are necessary to have an approvable program under CZARA. Some commenters contend that the FPA is inconsistent with water quality standards and CZARA and the Oregon Department of Environmental Quality has failed to use its authority to address these inconsistencies. It was also noted that the lack of political will along with state tax benefits to timber industry contribute to the lack of resources state agencies have to improve degraded water quality. One commenter noted that compliance with forest practices regulations is not equal to compliance with water quality standards, and in most cases, enforcement occurs only after water quality damage has already occurred.

Conversely, a few commenters have argued that existing programs regulating forest practices are consistent with CZARA and that no additional management measures are needed. It was contended that the FPA adequately protects Oregon's watersheds and the Oregon CNP should be approved without conditions. It was noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. One commenter argued that both EPA and NOAA have failed to show that Oregon's forest practices rules do not meet water quality and beneficial use objectives; on the contrary, a "large body of science" demonstrates that Oregon forest practices have a "neutral to positive" effect on aquatic life.

Source: 35-I, 57-D, 57-E, 57-F, 57-G, 57-H, 57-S, 57-V, 57-W, 70-C, 75-E, 75-G, 77-F, 77-G, 79-B, 79-C

Response H.2:

Forestry – FPA Meets CZARA Requirements

Comment H.3: One group commented that Oregon's Forest Practices Act "establishes a dynamic program that responds promptly and deliberately to environmental issues as they arise…" The group cited sections of the FPA related to forest practices and water quality. It pointed out that the FPA requires that water resources, including drinking water, be maintained and that BMPs be established as necessary to insure maintenance of water quality standards. The commenter contends that the language of this FPA provision adheres to the CZARA requirement that additional management measures be established to maintain applicable water quality standards. The commenter also noted that the FPA already requires BMP monitoring including pesticide use monitoring, and landslides and public safety monitoring. And based on monitoring results, forest practice rules have evolved and improved over time. The commenter argued that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams, they have not cited any sources supporting these concerns.

Source: 77-F, 77-G, 77-M

Response H.3

Forestry – Riparian Management

Comment H.4: Many commenters agreed that the State has not done enough to prevent polluted runoff elated to timber harvesting and riparian protection. One comment stated that existing piecemeal approaches are not sufficient. Commenters have expressed their concerns for impacts to fish and drinking water and contend that water quality is and should be a priority for Oregon's watersheds. They argue the State must increase protection for small and medium fish bearing streams and non-fish streams and acknowledge that stream protection proposals have been introduced in the past but have yet to be approved.

Commenters describe how existing riparian buffer rules for these streams are not adequate for ensuring good drinking water quality or protection of fish bearing streams. One commenter pointed out how Oregon is behind California and Washington in regard to setbacks, the notification or application process and consequences for non-compliance. Examples provided by commenters illustrate how existing buffers are too narrow or even non-existent due to clear cutting. One commenter noted the lack of buffers on non-fish streams make sedimentation a constant issue. It was also pointed out that excess sediment entering public waters from logging roads and chemicals (fertilizers, herbicides and pesticides) applied in riparian areas result in carcinogens and other toxins making their way into Oregon's drinking water and fish-bearing streams.

Others agree with the need for additional management measures but contend that the federal agencies need to work with Oregon to address the remaining concerns while keeping in mind the political challenges Oregon faces. The idea was presented that "Thoughtful science" should be provided when addressing these challenges. Moreover, maintaining support of the forest industry is also important for water quality protection.

One commenter contended that additional riparian setbacks would only hurt the logging industry and drive lumber prices up.

Source: 4-C, 13-B, 14-D, 20-B, 24-C, 28-B, 30-E, 30-K, 30-L, 30-M, 35-I, 35-J, 40-A, 43-E, 44-D, 46-C

Response H.4:

Forestry – Landslide Management

Comment H.5: Some commenters acknowledged that landslides caused by logging practices such as clear cutting are a real problem in Oregon and additional management measures are necessary to address these impacts. It was noted that Oregon does not have sufficient programs in place to control non-point pollution from forestry practices, particularly due to logging on private lands.

Others expressed their disagreement with the federal agencies' recent decision and argued that the evidence provided by the federal entities was misleading, only focusing on "landslide density relationships" rather than considering the "total number of landslides triggered during major storms". If consider the latter, one would see that the "potential increases in sediment delivery to public resources from landslides.. is proportionally small". In addition, it was argued that EPA has not offered objective evidence that additional management measures are needed to maintain water quality. It was recommended that EPA consider a broader scale view over longer timeframes to evaluate whether water quality and designated uses are impaired. The commenter added that the federal agencies have not produced any evidence that landslides resulting from forest management activities have caused exceedances in water quality or negatively impacted aquatic life.

Source: 61-A, 63-B, 67-B, 77-J, 77-K, 77-L

Response H.5:

Forestry – Road Management

Comment H.6: One group commented that there is no program in place to control non-point pollution sufficiently to meet CZARA and management measures are needed to maintain water quality and protect designated beneficial uses due to logging impacts. Examples of logging roads and associated impacts to watersheds and habitat were noted by various commenters. Speaking to current forest practice rules, another group commented that "generic BMPs" are imposed and are not backed by relevant water quality data and so fail at protecting water quality and beneficial uses. The group added that existing rules for forest roads are vague and prioritize logging over protection of water quality. One argument stated that Oregon's road location rule, which only requires operators to minimize risk to streams rather than requiring them to avoid water quality problems, is not sufficient. Other examples given demonstrating the inadequacies of the current forest practices rules include how they are not designed to eliminate delivery of fine sediment or to ensure that delivery does not impair water quality and they do not require that existing, inactive logging roads or "legacy roads" be brought into compliance with water quality standards.

Another group made the argument that while NOAA and EPA have expressed their concerns about forest roads delivering sediment into streams and have requested that the state enact an inventory and

reporting program for forest roads, they have not cited any sources supporting these concerns and have presented no basis for the request. The commenter contends that new rule revisions (2002 – 2003) and success under the Oregon Plan for Salmon and Watersheds were detailed in the State's submission and are evidence that the Oregon Forest Practices Act is working as it should and the Board of Forestry is committed to implement additional management measures for forestry roads as needed. They also note that salmon stocks are recovering.

Source: 57-D, 57-I, 57-N, 57-O, 57-P, 57-R, 57-T, 57-U, 67-B, 75-D, 77-M, 77-N, 77-O, 77-P, 77-Q, 77-P, 77-Q

Response H.6:

Forestry – Pesticides Management

Comment H.7: Many commenters voiced concerns about pesticide and herbicide use associated with the forest industry in Oregon, especially using aerial spraying as a method of applying these chemicals. Adverse impacts to drinking water sources, designated uses, and habitats were among the list of issues commenters raised. Stories of chemicals used in forest practices found in local streams and in state residents were reported. Some believe that Oregon coastal watersheds are not adequately protected from pesticides and herbicides. A few noted that existing buffers are ineffective including existing no-spray buffers around fish-bearing streams, which are considered to be too small and non-fish bearing streams are not protected at all. One commenter suggested a pesticide-free buffer around certain land uses such as schools. One commenter discussed how certain herbicide chemical properties allow for them to persist in the environment and are eventually carried downstream to fish. It was noted that not enough is known about the interactions of chemicals when mixed. Moreover, it was expressed that additional research is needed to determine if aerial spraying of herbicides in forest industry is a necessary method of application.

One group contended that existing water quality monitoring activities for non-fish bearing streams during and after spraying herbicides has shown no "detrimental impacts" and Oregon continues to support monitoring that would identify potential problems if any arise. The commenter added that there have been changes over the years in chemical labeling and how chemicals are applied to forests. The commenter pointed out that pesticide applicators are licensed and along with landowners are already subject to stringent regulations and guidelines under the FPA.

Source: 62-B, 62-C, 69-C, 70-C, 70-D, 70-E, 70-G, 70-J, 72-B, 75-C, 76-A, 76-C, 77-R, 77-S, 77-T, 85-D, 85-E

Response H.7:

Forestry – Inadequate Pesticide Monitoring After Use by Forestry Industry

Comment H.8: In addition to their general concern about pesticide use by the forest industry and inadequate riparian buffers when pesticides are applied, several commenters expressed their concern about the inadequacy of the Oregon's water quality monitoring efforts following aerial application of pesticides and herbicides on forestry lands. They gave many examples of how they believe drinking water, human health, and fish and wildlife have been impaired by aerial spraying. However, they noted without effective monitoring protocols the state lacked data to prove aerial application was a problem and improvements were needed. For example, one commenter stated there was no monitoring of aerial drift even though the Oregon Health Administration said chemicals could drift two to four miles.

Another commenter also noted there was little to no coordination between DEQ and ODF on pesticide monitoring. One commenter also questioned NOAA and EPA's praise of Oregon's Water Quality Pesticide Management Plan. They noted that while the state purportedly uses water monitoring data to develop adaptive management approaches, the state actually undertakes very little pesticide monitoring and that there is no evidence the state collects any data in coastal watersheds.

Source: 30-R, 42-G, 42-H, 46-H, 49-I, 57-II

Response H.8:

Forestry - Clear Cuts

Comment H.9: Commenters expressed their concerns with the clear cutting practice associated with the logging industry. They disagreed with the amount of clear cutting that occurs, including the FPA rule, which allows up to 120 acres. The point was made that the rule did not consider cumulative impacts. Commenters discussed the impacts to water quality associated with clear cutting, particularly when combined with a lack of riparian buffers and sprays. In addition, the problem of clear cutting on steep, erosional slopes, which contributes to landslide problems and further impacts water quality. One commenter argued that clear cutting is not sustainable and Oregon needs to practice sustainable forestry. Commenters provided examples of impacts resulting from clear cutting including extensive clear cutting that has occurred in riparian areas around watersheds, including waterways that provide drinking water, despite having steep slopes and erosive soils; and clear cutting that has occurred in areas with designated spotted owl sites and high risk areas.

Source: 12-A, 40-A, 42-D, 43-D, 53-F. 75-B, 75-C, 75-D,

Response H.9:

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I. Agriculture

General—Ability of Oregon's Agricultural Programs to Meet CZARA Requirements

Comment I.1: Some commenters noted that they did not believe Oregon had satisfied the CZARA requirements for Agriculture and the conditions related to the agriculture management measures that NOAA and EPA placed on Oregon's Coastal Nonpoint Program. They believed Oregon has failed to control polluted runoff from agriculture activities and that water quality and designated use impairments were still occurring due to agricultural activities. Various points were made about the ineffectiveness of existing enforcement and monitoring efforts as well as the inadequate management approaches and programs the state relies on to meet the CZARA requirements (see specific comments below for detailed examples). Other commenters felt strongly that the state had satisfied the CZARA agriculture management measures and the conditions placed on its program related to agriculture (see specific comments below for detailed examples). They noted that finding otherwise would be

unreasonable and would not be in line with CZARA requirements. Some commenters also noted finding that the state has not submitted an approvable program for agriculture would punish of the agriculture community.

Source: 44-F, 49-G, 64-C, 65-F, 66-C, 68-C

Response I.1:

General –Effectiveness of the Agriculture Water Quality Management Area Program and Plans for Meeting the CZARA Management Measures

Comment I.2: Several commenters expressed concerns with the effectiveness of the state's Agriculture Water Quality Management Area (AWQMA) Program for addressing polluted runoff. They did not believe the program enabled Oregon to meet CZARA requirements. However, other commenters were supportive of the program and thought it did enable the state to meet its CZARA agriculture requirements.

Specifically, commenters that were concerned about the adequacy of the AWQMA Program, noted that current agricultural water quality management area rules are insufficient to meet water quality standards and TMDL load allocations. They also stated that there is inadequate enforcement of the rules and lack of an implementation plan to ensure that agricultural landowners' voluntary actions occur. Oregon Department of Agriculture (ODA) largely relies on voluntary actions by landowners to adhere to the AWQMA rules and meet water quality standards. For example, one commenter, who is an agriculture landowner and a member of an Agricultural Water Quality Management Area (AWQMA) local advisory committee, discussed how the committee was informed that the AWQMA plan would be complaint driven and compliance was voluntary. The commenter questioned the effectiveness of this approach when ODA only issued three fines over the last eleven years.

Other commenters that felt Oregon had satisfied its CZARA agriculture management measure requirements and conditions through the AWQMA Program, noted that the coastal AWQMA plans directly reference the 6217(g) agriculture management measures and that ODA has the authority to require management measures that meet CZARA requirements or impose additional measures if necessary. They also believed the AWQMA plans and rules had sufficient goals and policies for improving water quality within coastal watersheds.

These commenters also described how ODA works with ranchers and farmers to modify, reduce and remove ineffective agriculture practices. Commenters noted that farmers have worked hard to meet or exceed water quality standards by working with the state to develop Agricultural Water Quality Management Plans, which set watershed goals and investment priority areas that enhance water quality. They added that this planning also requires ODA to implement site-specific and site-appropriate controls, which are "designed to address actual water quality issues with economically achievable measures", which aligns with CZARA's requirements for economically achievable management measures. Several farmers noted that they willingly participated in the AWQMA and voluntary programs because they had the understanding that the AWQMA Program and there voluntary efforts would meet all federal and state regulatory requirements for agriculture.

Commenters noted the success of the state's AWQMA Program and voluntary efforts over the years. For example, one commenter noted between 1998-2012, OWEB contributed nearly $18 millions for coastal

agriculture projects and over an additional $5M was provided in-kind support from SWCDs and landowners. These efforts were able to restore over 950 linear stream miles and improved agricultural practices that impacted over 2,750 acres of farmland. In addition, landowners voluntarily enrolled thousands of acres of farmland in federal programs designed to improve water quality.

Various groups represented by one comment letter contended that the Agricultural Water Quality Management Plans and rules meet and exceed the requirements of CZARA. They pointed out that agricultural land use represents approximately five percent of land uses within the coastal zone and the primary agricultural land use of that five percent is pasture or hay agriculture resulting in lesser impacts to water quality. They argued that most agriculture landowners comply with existing water quality management rules and meet relevant CZARA requirements and there is an existing process in place to address noncompliance instances. They also contended that CZARA requires the State and its agencies to use its authority to enforce a water quality program that meet or exceed 16 U.S.C. 1455b requirements and that ODA has demonstrated it has used its authority to enforce AWQMP rules where necessary and appropriate in the state's July 2013 submission.

Other commenters also asserted that the ODA has the ability to enforce the AWQMA program and ensure compliance with water quality requirements. They refute claims by others that few ODA enforcement actions over the years demonstrate that ODA does not have the ability and/or will to enforce the AWQMA program and ensure water quality is protected. On the contrary, the commenter notes that when a problem is identified, ODA first works closely with the noncompliant landowner to make necessary land use changes voluntarily before turning to enforcement. Therefore, most issues are corrected before an enforcement action is needed. Commenters highlighted the existing review and monitoring processes ODA has enacted to track program "implementation and effectiveness".

Source: 57-CC, 57-EE, 64-C, 64-F, 65-B, 65-C, 65-D, 65-E, 65-F, 66-C, 66-F, 68-C, 68-F, 71-A, 71-B, 71-C, 71-G, 71-K, 71-N, 71-Q, 72-A, 73-A, 78-H, 78-I

Response I.2:

General—Inadequacy of Oregon Water Resources Department's (OWRD) Water Use Basin Program for Meeting Irrigation Management Measure

Comment I.3: Another group commented that the Oregon Water Resources Department's (OWRD's) Water Use Basin Program is inadequate for meeting CZARA requirements for agriculture. They suggested that NOAA and EPA were incorrect when finding that OWRD's Water Use Basin Program supports the irrigation measure and reiterated that Oregon's Basin Programs do not ensure that water quality and habitat for sensitive and endangered species will not be impaired. They urged EPA and NOAA to look closely at the deficiencies of the Basin Programs before attributing any water quality or fish habitat protection value to them as a measure in support of Oregon's agricultural conditions. They added that Oregon's rules provide no assurance that water use will be adequately limited to maintain minimum flows and Basin Programs fail in practice to protect minimum perennial streamflows and instream rights held by OWRD for the protection of aquatic wildlife and water quality. They concluded that EPA should disapprove Oregon's agricultural measures and acknowledged the lack of protection offered by Oregon's Water Use Basin Programs for preservation of aquatic life and designated uses in the agencies' final determination.

Source: 65-B, 65-C, 65-D, 65-E, 65-F

Response I.3:

Agriculture-Buffers

Comment I.4: Various commenters noted the need for adequate buffers along both fish and non-fish bearing streams to protect water quality, including cold water temperatures needed for the recovery and health of native salmon. It was noted that Oregon lacks necessary management measures for riparian protection to help meet water quality standards and to protect coho salmon, amphibians, and drinking water. Another commenter noted too that Oregon has failed at controlling polluted runoff caused by erosion and sedimentation from agricultural lands and destruction of riparian areas by livestock. On the other hand, it was pointed out that farmers and ranchers have installed many miles of piping for livestock watering, and have planted and fenced many miles of stream banks.

One commenter spoke about her experience serving as an advisory member to the Mid-Coast Basin Agricultural Area Advisory Committee during its local area planning in 2009. The commenter explained that when specific buffer proposals were presented to the committee, "All of the specific proposals for riparian protection were rejected by the committee, despite their knowledge of specific water quality problems in the basin created or exacerbated by inadequate riparian vegetation, including stream temperature problems and bacterial contamination from livestock".

However, other commenters asserted that the AWQMA plans do require buffers. They noted that CZARA does not specifically require riparian buffers for agriculture. If NOAA and EPA do require a blanket riparian buffer for agriculture lands through the Coastal Nonpoint Program, it would be taking a "one-size-fits all" approach that goes against the inherent flexibility that CZARA provides the states.

Source: 15-H, 44-F, 49-G, 55-E, 71-R, 72-A, 81-A, 83-E, 83-F, 83-L

Response I.4:

Agriculture-Pesticides

Comment I.5: Commenters expressed their concerns with the amounts of pesticides being applied and lack of management measures in place to address pesticide use over agricultural lands. One commenter emphasized the importance of adequately managing pesticide spraying to protect human health from exposure. The commenter referenced a local case where sudden poor health suffered by residents appeared to be related to their exposure to pesticide sprays. Commenters reiterated that no pesticide management measures are being implemented over Oregon's agricultural lands, and the Oregon Department of Agriculture's pesticide use programs fail to control polluted runoff from pesticide use on agriculture lands.

One commenter noted that NOAA and EPA's rationale for agriculture does not make any findings about the adequacy of Oregon's program to protect water quality and designated uses from pesticides applied to agricultural lands. They noted that Oregon's management measures for pesticides are not adequate to meet water quality standards or support designated uses and additional management measures to address pesticides are needed. Another commenter and member of an Agricultural Water Quality

Management Area local advisory committee questioned how the committee was advised to not consider pesticides as a pollutant.

One group also described a herbicide monitoring program that found polluted runoff from all types of herbicide land application, including agriculture operations. They noted that while applicators may have applied the herbicide correctly, runoff was still occurring, indicating the state's rules were ineffective at protecting water quality from herbicide application.

On the contrary, another commenter pointed to the state's Pesticide Stewardship Program, CAFO and AQWMA programs are already in place to address any related pesticide issues.

Source: 28-D, 57-GG, 57-HH, 59-A, 81-B, 83-A, 83-E, 83-M

Response I.5:

Agriculture-Extent of Nonpoint Source Pollution from Agriculture

Comment 1.6: Several commenters noted that NOAA and EPA did not support their claim that nonpoint source problems from agriculture are widespread. The stated that the draft salmon listings and recovery plan findings are based on opinion and anecdotal evidence and unsupported by scientific fact. Therefore, commenters requested that the agencies' references to the coho salmon listings and recovery plan findings as they relate to agriculture impacts to water quality be removed. They also noted that Oregon has already developed water quality standards designed to protect designated uses (including coho salmon and other endangered or threatened fish species) and this program adequately addresses activities to ensure protection of these species. They contended that most ambient water quality monitoring reports indicate "fair to excellent water quality" and sites with poor conditions are not due to agricultural activities.

Source: 64, 66, 68, 70-O, 71-M

Response I.6:

Agriculture- Need for Additional Management Measures

Comment I.7: Multiple commenters noted that Oregon needed to implement additional management measures for Agriculture to meet water quality standards and to protect designated uses. Specifically, they noted that in most cases, allowable temperature increases for nonpoint source pollutants is zero, so it is very likely that agriculture activities are contributing to violations of temperature standards. In addition, none of the Agriculture Water Quality Management Plan Basin rules incorporate additional management measures needed to meet the zero load allocations established in the existing temperature TMDLs for Oregon coastal watersheds.

Several commenters suggested specific additional management measures to protect water quality. Several commenters noted minimum riparian buffers needed to be established. One commenter noted that published literature suggested that the minimum width should be now less than 100 feet (30 meters) and that greater than 100 foot buffers may be needed in certain areas, such as low gradient meandering channels that are adjacent to designated critical habitat for listed species. Other additional

management measures that commenters identified included fencing streams and riparian areas to reduce impacts by livestock, improved permitting, monitoring and relocation of CAFOs, and regulatory provisions to promote the establishment of riparian vegetation in critical habitat areas and to promote beaver reintroduction in suitable locations.

On the other hand, several commenters asserted that additional management measures for agriculture were not needed. The commenters noted that EPA and NOAA have not provided specific data or information that would support the need for additional management measures, many of which may be "economically achievable". They noted that CZARA does not have specific requirements for riparian buffers on agriculture land, restoration of lands to pre-agricultural uses, additional management measures that do not result in reduced nonpoint source pollution. In addition, they note that, per the CZARA statute, all management measures must be "economically achievable."

Source: 15-H, 23-B, 44-C, 47-B, 56-M, 57-CC, 57-EE, 60-E, 64-E, 66-E, 68-E, 71-H

Response I.7:

Agriculture-Addressing Legacy Agriculture Issues

Comment I.8: A few commenters expressed their concern about legacy agriculture issues, such as where riparian vegetation may have regrown on former agriculture land but the buffer is comprised of largely invasive species (i.e., blackberry brambles) and does not provide sufficient protection of stream water quality or create quality habitat. They believed that Oregon needed to adopt additional management measure requirements to address this legacy issue.

Another commenter, representing various groups, was troubled by NOAA and EPA's assertion in the proprosed findings, that AWQMA planning and enforcement do not address "legacy" issues created by agriculture activities that are no longer occurring. The commenter stated that neither CZARA nor the 6217(g) guidance define legacy issues or require that state coastal nonpoint programs address legacy issues. They noted that despite this, the Oregon Watershed Enhancement Board still invests money to address legacy agricultural issues. They added that Oregon does have a process in place to identify opportunities to enhance and restore watersheds, including "legacy" issues, "through the Oregon Plan for Salmon and Watersheds, the Oregon Aquatic Habitat Restoration and Enhancement Guide, OWEB riparian restoration projects, Area Plans, and many other federal, public and private partnerships. These programs are successful due to the voluntary efforts of many Oregon agriculture landowners".

Source: 44-F, 57, 71-T

Response I.8

Agriculture-Effectiveness of Existing Monitoring and Tracking Programs

Comment I.9: Several commenters expressed their concern with Oregon's existing monitoring and tracking efforts to evaluate the effectiveness of its agriculture programs and where improvements are needed. Although a few commenters acknowledged ODA's new strategy for more targeted water quality monitoring is a step forwarded, they believed a much more robust monitoring program was needed to understand when adaptive approaches are needed.

Another group acknowledged a significant gap in the existing science around the effectiveness of Oregon's agricultural practices in protecting water quality and designated uses. They noted that the state cannot move forward with stronger agriculture regulations without first having a good understanding of how its existing program programs are falling short and what improvements are needed to ensure water quality standards are being met.

Other commenters believed the state's existing monitoring and tracking efforts were effective at assessing implementation of agriculture practices. Specifically they noted that biennial reviews of the AWQMA plans, with about 18 reviews done each year, provide a way to track plan implementation. They also highlighted the state's efforts to develop a more formalized evaluation processes through the Strategic Implementation Areas and Focus Areas process to effectively target priority areas and issues. They also noted that the state's new Enterprise Monitoring Initiative, which began in 2012, monitors waterways passing through agriculture lands and can be used to inform the effectiveness of the AWQMA program.

Source: 71-S, 73-A, 79-I

Response I.9

J. Hydromodification

Comment J.1: A couple of commenters discussed the negative impacts of hydromodification, noting the effects of dams on water quality and habitat and impacts from channel modification. They declared that Oregon has failed to control polluted runoff from eroding stream banks and shorelines and it does not have programs in place to protect and restore channel conditions from modification.

Source: 46-H, 49-F

Response J.1:

K. Wetland

Comment K.1: One commenter noted that Oregon does not have programs in place to protect and restore riparian areas needed to maintain cool stream temperatures and habitat or to protect and restore wetlands.

Source: 49-F

Response K.1:

Other Comments—Not Responsive?

The Public Comment Period

Comment: One commenter questioned why NOAA and EPA requested public comment on their proposed decision. They noted public comment was needed as long as the federal agencies' decision and analysis is based on established criteria and valid science which they believed to be the case.

Source: 15-B

Response:

Importance of Beavers

Comment [AC3]: Combine with comments on need to develop add MMs for beavers? I think NWEA may have made some point along these lines???

Comment: One commenter expressed their concern over diminishing beaver because they are being trapped and hunted out. They note that beavers play an important role in maintain natural stream channels, wetlands, and complex floodplains.

Source: 44-G

Response:

Proposed Decision Exceeds NOAA and EPA's Authority

Comment: One commenter noted that the Federal Government places too many regulations on the states, private property owners, and individuals and that NOAA and EPA exceeded the limits defined by the U.S Constitution. The commenter suggested that Congress should remove the budgets for NOAA and EPA and return those funds back to the state.

Source: 29-A

Response: